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SUMMARY RECORD OF THE 31st MEETING

Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

CONTENTS

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued)

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued)

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In the absence of the Chairman, Mr. Madej (Poland), Vice-Chairman, took the Chair.

The meeting was called to order at 3.25 p.m.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued) (A/49/22, A/C.6/49/L.4 and L.9)

1. Ms. LADGHAM (Tunisia) said that the increase in the number of acts of violence committed against personnel involved in United Nations peace-keeping operations showed the urgent need to take measures to strengthen their protection. Tunisia, which provided troops for several peace-keeping operations, had been among the first countries to express its support for the elaboration of an international instrument on the question. Accordingly, it did not wish to call into question the adoption of the text under consideration; its sole concern was to secure the widest possible adherence to the future convention, for, without that, the intended objective could not be achieved. Yet statements by previous speakers seemed to suggest that there were still differences of opinion regarding the substance, which might delay, or even altogether prevent, accession to the Convention by a number of countries.

2. Articles 1 and 2 of the draft convention were certainly those that had given rise to the most heated debates between advocates of a restrictive scope of application and those who favoured a broad application of the convention. As formulated, the convention would apply to all peace-keeping or peace-making operations, with the exception of those covered by Chapter VII of the Charter. It would also apply to other United Nations operations which had been declared by the General Assembly or the Security Council to entail an exceptional risk to the security of personnel. Regarding that latter point, her delegation wished to express its doubts as to the viability of the proposed mechanism.

3. Her delegation would also have preferred to see the reference to the consent of the host State, as a guarantee of the effectiveness of the operation and the safety of its personnel, in the main body of the text rather than in the preamble.

4. Some of the draft articles, in particular the definition of the personnel to whom the convention applied, still contained imperfections which might give rise to divergent readings when it came to application. Furthermore, the draft articles should have specified what organ or organs were empowered to authorize operations.

5. Compensation of personnel assigned to United Nations peace-keeping operations was a question of particular concern to Tunisia. The practice currently applied in the United Nations, whereby personnel were compensated on the basis of the scale applied in the country of origin, seemed neither satisfactory nor fair. Personnel serving the international community in the cause of peace should be entitled to just and equal treatment.

6. That question had also been the subject of consideration by the Special Committee on Peace-keeping Operations and, in its resolution 48/42, the General Assembly had requested the Secretary-General to review the compensation mechanisms with a view to developing equitable and appropriate arrangements, and to ensure expeditious reimbursement. The compromise reached by the Working Group, namely, the insertion in the saving clauses of a reference to an entitlement to appropriate compensation, did not completely satisfy her delegation, which would have preferred a bolder formulation. The fact that it was in a saving clause might cause some to believe that the entitlement in question was already applied in practice and that it was simply a question of preserving it. That concern, which was widely shared, would no doubt soon meet with a favourable response.

7. Mr. YOUSIF (Sudan), while recognizing the utility and value of the draft convention with regard to both the effectiveness of peace-keeping operations and the protection of personnel, said that his country had some reservations regarding the scope of application of the future convention. It had already objected to the inclusion of personnel of non-governmental organizations in the scope of application of the convention. In that regard, the Sudan had had occasion to note that some non-governmental organizations did not respect the laws of the countries in which they operated. There had been cases in which non-governmental organizations had been involved in activities likely to be detrimental to the security of the host countries, which had no means of controlling their acts. Consequently, in his delegation's view, inclusion of the personnel of non-governmental organizations in the definition of associated personnel raised problems which might have been avoided if the Working Group had taken account of the proposals made by certain delegations.

8. The draft convention should provide for a mechanism that would make the presence of individuals or of non-governmental organizations in a transit or host State conditional on the consent of the State concerned. As States Members of the Organization were required under Article 25 of the Charter to accept and carry out the decisions of the Security Council, the draft text should specify the criteria governing the prior consent of the host or transit State with regard to associated personnel, so as to reconcile, particularly in articles 1 and 6, the need to ensure the safety of peace-keeping personnel with the principle, set forth in the Charter, of respect for the political sovereignty of States.

9. As currently formulated, article 9 was likely to pose massive legal problems, since it required every State party to make all the acts listed therein crimes under its national law. Yet the acts referred to were not necessarily offences under the legislation of the States concerned. Not only did that requirement conflict with the principle of equality of all before the law, but it was also likely to delay the convention's entry into force, since those States would have to adapt their legislation to the provisions of article 9 before they were able to accede to it.

10. Believing that the current practice, whereby personnel were compensated on the basis of the scale applied in the country of origin, was unfair, his

delegation joined those delegations that had requested that one article should be specifically devoted to the question of compensation of personnel.

11. In conclusion, he said that his criticisms in no way diminished the importance his country attached to the future convention, and that if it was adopted, his delegation would not decline to join the general consensus.

12. Mr. PIBULSONGGRAM (Thailand) said that his country, which contributed troops to peace-keeping operations, was particularly concerned at the increasing insecurity faced by personnel involved in those operations. The international community had a duty to protect those courageous men and women; and also to ensure that the perpetrators of attacks and acts of aggression were brought to justice. A convention dealing with the safety of United Nations and associated personnel would fill a gap in international law and would serve to prove that the international community would not allow those who committed crimes against humanitarian and peace-keeping personnel to go unpunished.

13. While it did not entirely satisfy all delegations, the draft convention constituted a valuable contribution to the progressive development of international law. Debate on its provisions could continue for years to come; but in the meantime, United Nations and associated personnel would continue to be exposed to serious dangers. For that reason, his delegation favoured adoption of the draft convention in its current form.

14. Nevertheless, he pointed out that a legal instrument alone was not enough to ensure the safety of the personnel involved, and that it would be necessary to employ other means of persuasion, including preventive diplomacy.

15. Ms. CARYANIDES (Australia) said that the draft convention was a significant step forward in creating a legal framework for deterring attacks against United Nations and associated personnel, which would improve not only the safety of such personnel, but also the general effectiveness of United Nations operations. By requiring that each State party make an attack upon any United Nations or associated personnel a crime under its national law, the convention would create personal responsibility for individuals instigating the violence. It would also commit States parties to prosecute or extradite the alleged perpetrators of the attacks.

16. She did not share the view of some delegations that the convention had been drafted precipitously. Many of its provisions were not innovations: the mechanisms for the establishment of jurisdiction and the measures governing prosecution or extradition, for example, had already found expression in several international instruments. On the contrary, the draft convention harmoniously reconciled the rights and obligations of all concerned, in full compliance with the provisions of the Charter. It was thus capable of serving the interests of the international community as a whole.

17. The scope of application of the future convention was the issue that had created the greatest number of difficulties throughout the negotiations. Her delegation welcomed the fact that the definitions contained in articles 1 and 2

made it possible to cover the whole range of operations that the Security Council and the General Assembly had authorized in recent years. The definition of "associated personnel" was sufficiently broad to cover a very wide range of personnel, thereby according protection to the personnel of non-governmental organizations, who shouldered much of the burden of international humanitarian relief.

18. By stating that offenders would be held internationally and individually accountable for their actions even when the offences in question were perpetrated in areas outside the jurisdiction of a host State or where the Government concerned was unable to exercise its authority, the draft made it quite clear that the international community would not allow such offences to go unpunished. It was therefore important not to limit the scope of the convention to operations conducted under Chapter VI of the Charter; the Australian delegation expected that the Security Council or the General Assembly would make the prior declarations provided for in article 1, paragraph (c) (ii), of the draft.

19. She hoped that the draft convention would be adopted by the General Assembly at the current session.

20. Mr. AL-BADR (Qatar) said that 126 persons, including 39 staff members of organizations of the United Nations system, had died in peace-keeping operations in 1994, mainly in Rwanda, Somalia and Bosnia and Herzegovina. His delegation therefore supported the draft convention under discussion and hoped that the General Assembly would adopted it as soon as possible.

21. With regard to the definitions in article 1, however, he wondered whether paragraph (b) (iii) concerning persons deployed by a humanitarian non-governmental organization or agency might not be restrictive; for he was not sure whether the definition applied to persons whose activities were closely linked to the Organization's missions or operations even though they themselves were not working for the United Nations. He was referring specifically to journalists (correspondents, photographers and others), who worked for private companies but none the less carried out a humanitarian mission by reporting on the activities of United Nations staff and helping to mobilize international public opinion in support of the operations conducted by the United Nations and non-governmental organizations. That category of personnel should also be eligible for the protection afforded under the convention.

22. Although his delegation did not wish to amend the definitions contained in the draft, it hoped that some wording would be found that would afford protection to representatives of the international press and ensure that those responsible for attacks on them were brought to justice.

23. Mr. BAIRAGI (Nepal) noted with deep concern that a large number of Nepalese peace-keepers had been killed or injured while carrying out their duties under the United Nations flag. Nepal nevertheless continued to contribute troops to the Organization and was very proud to do so. However, the international

community had a duty to guarantee the security and safety of the personnel involved in such operations.

24. His delegation welcomed the draft convention on the safety of United Nations and associated personnel. It wished to stress, however, that the text would have come much closer to perfection if certain core issues, such as the "consent of the host State", had been addressed with sufficient clarity in line with the established norms of international law.

25. The provisions of the proposed text concerning criminal law amply demonstrated that the international community was determined to prosecute or extradite and to punish the perpetrations of attacks on United Nations and associated personnel. That part of the draft was largely based on legal precedent. It could be viewed as a compendium of previously established rules. The primary responsibility for ensuring the safety of the personnel taking part in United Nations operations lay with the host Governments and the parties concerned. It was equally important to ensure the impartiality and international character of operations. His delegation noted with satisfaction that those principles were duly reflected in the draft.

26. It was also pleased to note that the text recognized the important role played by the General Assembly - the only representative body of the United Nations - in determining the existence of an exceptional situation that jeopardized the safety of the personnel participating in the operations. It was a welcome indication of the increasing contribution of the General Assembly to peace-keeping activities.

27. Among the other issues duly addressed in the draft text, perhaps the most important was the right of a Member State to withdraw its voluntarily contributed troops. His delegation felt, however, that application of the provision in question should not serve as a pretext for weakening the strength of troops participating in a troubled operation.

28. Lastly, respect for the right of self-defence as an inalienable and fundamental right and recognition of the applicability of international humanitarian law and universally accepted standards of human rights were vital issues that had been properly addressed in the draft convention.

29. Mrs. KUPCHYNA (Belarus) said that the legal provisions currently in force concerning the protection of the staff of peace-keeping operations were definitely inadequate and that the draft international convention under discussion would remedy major shortcomings in international law and enhance the effectiveness of United Nations activities in the area of international peace and security. Although some provisions fell somewhat short of its expectations, the delegation of Belarus was perfectly satisfied with the draft, which it viewed as a balanced compromise text that took due account of the occasionally conflicting interests of States.

30. For the time being, the Republic of Belarus was making only a modest contribution to United Nations peace-keeping activities but the question of the

participation of Belarusian troops in such operations was being actively addressed by the competent authorities. The adoption of an international convention on the safety of personnel could swing the balance in favour of a rapid affirmative decision. Accordingly, her delegation was in favour of the draft being adopted - and the convention being opened for signature - at the current session of the General Assembly. That would lay the foundation stone of a universal structure of protection for United Nations and associated personnel.

31. Mrs. RAMIRO-LOPEZ (Philippines) fervently hoped that the adoption of the convention on the safety of United Nations and associated personnel would serve as a warning to those who sought to challenge the firm resolve of the United Nations to fulfil the mandates of the international community. She also hoped that the Organization would show the same resolve in enforcing the text. The unjustifiable and criminal acts perpetrated against United Nations and associated personnel could only be deterred by swift action and the certainty of punishment.

32. Her delegation would have preferred the draft convention to extend its system of protection and redress of grievances to United Nations personnel engaged in humanitarian operations and other entities acting on their behalf. Such operations involved the same degree of risk as peace-keeping operations and were equally important. Her delegation regretted the lack of consensus on that score and hoped that the lacuna would be remedied as soon as possible by a new and more comprehensive instrument.

33. Her delegation supported the draft convention, not only because it would provide protection for Filipino nationals participating in peace-keeping operations, but also because it required the host State to exercise extraordinary vigilance in the prevention of acts of violence against United Nations and associated personnel and to ensure a speedy redress of grievance upon the occurrence of acts of violence. It was not lost on her delegation that, in the current state of events, developing countries would bear the brunt of that burden. The support of the developing countries for conventions of that type could therefore be seen as an affirmation of the growing maturity of their legal and administrative systems: none of them would shrink from that responsibility, which validated the gains made by their respective Governments.

34. Mr. OBEIDAT (Jordan) said that the unacceptable attacks against United Nations personnel were more than just attacks on the person of the victims and were directed at the activities and very legitimacy of the Organization. The speed with which a draft convention had been elaborated in that field showed how concerned Member States were about the safety of United Nations and associated personnel and about the need to fill the legal void that rendered difficult the protection of such personnel, which, in reality, was tantamount to protecting international peace and the humanitarian activities of the international community.

35. The Jordanian delegation welcomed the results of the negotiations on the draft convention, particularly the inclusion in article 1 of the words "agreement of the competent organ of the United Nations" [(b) (i)], and "under

United Nations authority and control" [(c)]. It also attached great importance to the inclusion in the text of certain guarantees which it considered essential and which were embodied in the words "with the consent and cooperation of the host State" (seventh preambular paragraph) and "consistent with the Charter of the United Nations" (art. 20). Lastly, the Jordanian delegation welcomed the establishment of a link between the scope of the draft Convention and the scope of international humanitarian law and of the laws of war, thereby again averting a legal vacuum and the consequent absence of protection.

36. The Jordanian delegation had become a sponsor of the draft resolution on the convention, which, because it was based on the principle "try or extradite" and used the wording found in many existing international conventions, could not but be consistent with the international legal order and receive the support of the vast majority of States.

37. Mr. ENAYAT (Islamic Republic of Iran), summarizing the position of his delegation, said that the scope of the draft convention, which had only recently been defined, should be more precise and more clearly delimited. Moreover, the consent of the host State should be a prerequisite for any United Nations operation. With regard to subparagraph (c) (ii) of article 1, he wondered why it had been decided to grant the Security Council or the General Assembly the power to enforce the provisions of the convention even though it was not within their competence to do so.

38. The Iranian delegation was of the view that the definition of "associated personnel" given in the draft text was very vague and general and therefore should not be included in the scope of application of the convention.

39. Lastly, he wished to emphasize that all peace-keeping operations were launched from the territory of the host State. Accordingly, no consideration should be given to the transit State (art. 5) for the purposes of the draft Convention. Moreover, such a question was of no relevance to the security of personnel and therefore had no place in the draft text. In conclusion, his delegation stood ready to cooperate in improving the text of the draft convention.

40. Mr. SEVAN (Assistant Secretary-General for Conference and Support Services, and United Nations Security Coordinator), speaking on behalf of the Secretary-General, and that the issue of the security of United Nations staff members was of paramount importance to the Secretary-General, to the executive heads of organizations and to the staff as a whole. It was for that reason that the Administrative Committee on Coordination had strongly supported the General Assembly's initiative to conclude a draft Convention on the Safety of United Nations and Associated Personnel.

41. Such personnel were carrying out activities mandated not only by the Security Council or the General Assembly, but also by the Economic and Social Council and by the governing bodies of United Nations programmes, funds and specialized agencies. All those functions constituted an integral part of the overall objectives of the Organization. The work of such individuals was no

less important and was often no less dangerous than the work carried out by those involved in peace-keeping operations.

42. Under the Convention on the Privileges and Immunities of the United Nations, the host Government had the primary responsibility for the safety and security of United Nations staff. As things currently stood, there was no international protection available to United Nations personnel. The Convention on the Privileges and Immunities of the United Nations provided exemption from legal process only with respect to acts carried out in the course of performance of official functions. It did not provide for the prosecution of those who committed crimes against United Nations and associated personnel. Since 1992, however, 88 United Nations staff members had lost their lives (including 39 in Rwanda). Of the 42 victims who had been shot to death, not a single case had been resolved.

43. The Administrative Committee on Coordination had taken the position that all United Nations staff members serving with the organizations of the United Nations system should be afforded the same degree of protection. The draft convention under consideration therefore represented a crucial first step towards enhancing the safety of United Nations staff. It was incumbent on all Member States to consider urgently further measures to provide equal security for all United Nations and associated personnel.

44. Mr. XU Guangjian (China) said that the Chinese language version of the draft convention contained a number of errors. His delegation had a corrected version which it could make available to the Secretariat.

45. Mr. KIRSCH (Chairman of the Ad Hoc Committee and of the Working Group on the Elaboration of an International Convention dealing with the Safety and Security of United Nations and Associated Personnel) thanked delegations for the kind words which they had addressed to him and the constructive comments which they had made on the draft Convention, which he hoped could be adopted at an early date.

46. The CHAIRMAN announced that El Salvador, Guatemala, Jordan, Kyrgyzstan, Samoa and the United States of America had joined the sponsors of draft resolution A/C.6/49/L.9.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued)

47. The CHAIRMAN announced that Portugal had joined the sponsors of draft resolution A/C.6/49/L.6.

The meeting rose at 3.25 p.m.